



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWK/161285

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance (MA), a telephonic hearing was held on November 13, 2014.

The issue for determination is whether the agency correctly seeks to terminate petitioner's music therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kate Lapacek, Case Mgr., CLTS Program
Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County.

2. The petitioner receives MA through the Children's Long Term Support (CLTS) Medicaid Waiver. She is 4 years old and diagnosed with Developmental Delay, Bilateral Optic Nerve Hypoplasia, and Receptive/Expressive Language Disorder.
3. In May 2014, the CLTS program approved once weekly/30 minute music therapy services for petitioner. See Exhibit 2. The purpose of the music therapy was to help petitioner regulate her body and emotions to calm herself and to improve her social skills.
4. In September 2014, petitioner was reassessed for CLTS. The recommendations from that assessment found that petitioner's needs include being comfortable with caregivers other than her parents, her parents getting a break from caring for her, improving her ability to regulate emotions, improving her attention span, developing appropriate social skills and improving environmental awareness. At that time it was determined that petitioner did benefit from music therapy through improving her attention span, eye contact, participation in group activities, and following directions, but that it was not addressing all of her assessed needs. See Exhibit 3; see also Exhibit 4.
5. On September 24, 2014 the agency issued a notice to petitioner stating that the music therapy would be terminated on October 4, 2014 because it determined that music therapy was not meeting all of her assessed needs, and that her needs would be better met through an evidence-based behavioral intervention that utilizes a pyramid model. Exhibit 1.

DISCUSSION

The Medicaid Home and Community Based Waiver (HCBW) programs were authorized by Congress in 1981, and began in Wisconsin in 1983 with the Community Integration Program. The CLTS program started on January 1, 2004, after the federal Department of Health and Human Services informed the State of Wisconsin that federal MA funding would no longer be available for in-home autism services. The Department of Health Services drafted and released the Interim Medicaid Home and Community-Based Waivers Manual (*Manual*) that became effective with the start of the CLTS program. The *Manual* also covers the Community Integration 1A and 1B programs and the Traumatic Brain Injury Waiver program. It can be found on the internet at <https://www.dhs.wisconsin.gov/waivermanual/index.htm>.

The petitioner here is requesting that her music therapy services remain in place. The agency argues that evidence-based behavioral interventions that use a pyramid model would be better suited to address petitioner's assessed needs. The agency suggests that the Applied Behavior Analysis (ABA) provided by the Wisconsin Early Autism Project (WEAP) is one such intervention that would be a better service for this petitioner given her age and needs. The agency does not suggest that music therapy is without merit, however, again, given her 4 years of age and assessed needs, the ABA therapy is more appropriate to attempt to successfully address her needs. Indeed, the WEAP curriculum addresses understanding language, communicating with and relating to peers, building age appropriate and symbolic play skills, and increasing conceptual thinking and cognitive skills. See <http://www.wiautism.com/services.php>. WEAP-trained therapists work one-on-one with each child in their home and develop a method of instruction to the child's ability level and rate of learning. *Id.* The agency asserts that the in-home services would be more appropriate for a 4 year old where her parents can be involved to learn about behaviors and intervention strategies within her natural environment, and where the interventionist can observe and analyze the complex factors that occur in the natural environment and affect the child's behavior.

An end of month summary form was provided to show how petitioner has been progressing with music therapy. See Exhibit 4. Indeed, such progress reports are required under the CLTS program and may be used to evaluate the need for the continuation or modification of treatment or therapy services. See *Manual*, Chapter IV, Page IV-71. The reports from petitioner's mother indicated to the agency that she was doing better with tracking objects, increasing attention span and focus, calming herself, following

directions and happy with music therapy. However, what little progress has been shown by way of the form or through petitioner's mother's anecdotal testimony is difficult to attribute solely to music therapy in light of the fact that she is also receiving occupational therapy and speech and language therapy, as well as her natural maturation.

Any counseling or therapeutic service funded by the waiver program must address an assessed need and be directly related to a therapeutic goal. *Id.* and see Chapter IV, Page IV-106. In May, petitioner's assessed needs included regulating her emotions and improving her social skills, and respite for the parents. In September, the assessment found that petitioner's needs include being comfortable with caregivers other than her parents, respite for the parents, improving her ability to regulate emotions, improving her attention span, developing appropriate social skills and improving environmental awareness. The preponderance of the evidence suggests that her assessed needs would be better addressed through the in-home intensive behavioral services for a child of this age and that the in-home services would be a better fit than the music therapy at this time. Accordingly, I will uphold the termination of the music therapy.

CONCLUSIONS OF LAW

The agency correctly seeks to terminate the petitioner's music therapy services in order to authorize the in-home behavioral services.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of December, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 22, 2014.

Ozaukee County Department of Social Services
Bureau of Long-Term Support